

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DROPBOX, INC.,

*Plaintiff / Counterclaim
Defendant,*

v.

MOTION OFFENSE, LLC,

*Defendant / Counterclaim
Plaintiff.*

**Civil Action No. 6:20-cv-00251-ADA
(Lead Case)**

MOTION OFFENSE, LLC,

Plaintiff.

v.

DROPBOX, INC.,

Defendant.

Civil Action No. 6:21-cv-00758-ADA

**MOTION OFFENSE, LLC’S MOTION TO STRIKE DROPBOX, INC’S OFFER OF
PROOF REGARDING ITS INEQUITABLE CONDUCT DEFENSE (DKT. 355)**

Dated: May 16, 2023

Timothy Devlin (DE Bar No. 4241)
Alex Chan (Texas Bar No. 24108051)
Donald Puckett (Texas Bar No. 24013358)
Derek Dahlgren (*pro hac vice*)
Srikant Cheruvu (*pro hac vice*)
Andrew Sherman (*pro hac vice*)
Jedediah Phillips (*pro hac vice*)
DEVLIN LAW FIRM LLC
1526 Gilpin Ave.,
Wilmington, DE 19806
Telephone: (302) 449-9010

ATTORNEYS FOR MOTION OFFENSE, LLC

Motion Offense files this Motion to Strike Dropbox's Offer of Proof Regarding Its Inequitable Conduct Defense [Dkt. 355]. Dropbox's "Offer of Proof" is procedurally improper because it is nothing more than an attempt to reargue Motion Offense's motion for summary judgment that disposed of Dropbox's inequitable conduct defense in this case, and an attempt to backdoor new evidence into the record in the process.

In its Second Amended Answer, Dropbox asserted an affirmative defense of inequitable conduct. [Dkt. 119.] Motion Offense moved for summary judgment against this affirmative defense. [Dkt. 198.] Magistrate Gilliland entered a report and recommendation that the motion for summary judgment should be granted against Dropbox's inequitable conduct affirmative defense. [Dkt. 335.] Dropbox filed objections to the magistrate's report and recommendation. [Dkt. 343.] The Court overruled Dropbox's objections to the report and recommendation and entered summary judgment against Dropbox's inequitable conduct affirmative defense. [Dkt. 349.]

Given this procedural posture, Dropbox's "Offer of Proof" is in fact a motion for reconsideration of the magistrate's report and recommendation and a motion for reconsideration of the Court's decision overruling Dropbox's objections to the magistrate's report. *See Roberts v. Unitrin Specialty Lines Ins. Co.*, 2008 U.S. Dist. Lexis 62134 at *8-9, 2008 WL 3832223 (N.D. Tex. Aug. 14, 2008); *IceMOS Tech. Corp. v. Omron Corp.*, 2020 U.S. Dist. LEXIS 9416 at *8-9, 2020 WL 289505 (Dist. Ariz. Jan. 21, 2020); *Cal. Inst. of Tech. v. Broadcom Ltd.*, 2019 U.S. Dist. LEXIS 237111 at *26-27, 2019 WL 11828243 (C.D. Cal. Nov. 25, 2019).

It is procedurally improper for Dropbox to use an offer of proof at trial as a backdoor mechanism for putting evidence into the record that Dropbox could have and should have submitted in response to Motion Offense's motion for summary judgment. Dropbox's pretrial arguments and objections are sufficient to preserve evidentiary exclusion issues for appeal. *See Fed. R. Evid. 103(b)*. *See also Dell Computer Corp. v. Rodriguez*, 390 F.3d 377, 387 (5th Cir. 2004). Because Dropbox's offer of proof is a procedurally improper attempt to submit additional evidence in opposition to a previously decided summary judgment motion, the appropriate remedy is for the Court to strike Dropbox's filing from the

record. *See IceMOS Tech. Corp.*, 2020 U.S. Dist. LEXIS 9416 at *8-9, 2020 WL 289505; *Cal. Inst. of Tech.*, 2019 U.S. Dist. LEXIS 237111 at *26-27, 2019 WL 11828243. In the alternative, Motion Offense requests an order from the Court making clear that Dropbox's offer of proof is for the limited purpose of evidentiary exclusion issues at trial, and that the offer of proof is not being accepted in the record for the purpose of allowing Dropbox to submit additional evidence in opposition to Motion Offense's previously granted motion for summary judgment against the affirmative defense of inequitable conduct.

Dated: May 16, 2023

/s/ Donald Puckett

Timothy Devlin (DE Bar No. 4241)

Derek Dahlgren (*pro hac vice*)

Alex Chan (Texas Bar No. 24108051)

Donald Puckett (Texas Bar No. 24013358)

Srikant Cheruvu (*pro hac vice*)

Andrew Sherman (*pro hac vice*)

Jedidiah Phillips (*pro hac vice*)

DEVLIN LAW FIRM LLC

1526 Gilpin Ave.,

Wilmington, DE 19806

Telephone: (302) 449-9010

tdevlin@devlinlawfirm.com

ddahlgren@devlinlawfirm.com

achan@devlinlawfirm.com

dpuckett@devlinlawfirm.com

scheruvu@devlinlawfirm.com

asherman@devlinlawfirm.com

jphillips@devlinlawfirm.com

ATTORNEYS FOR MOTION OFFENSE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2023, I caused the foregoing to be served via
electronical mail to all counsel of record.

/s/ Donald Puckett

Donald Puckett